



(Billing Code 7510-13)

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

2 CFR Part 1800

RIN 2700-AE29

**Revisions to Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards
(NASA Case 2015-N030)**

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is issuing a final rule to amend its regulations, titled Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards to revise the requirements related to information contained in a Federal award for commercial firms with no cost sharing requirement and to add new or modify existing terms and conditions related to indirect cost charges and access to research results.

DATES: Effective: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jennifer Richards, telephone 202-358-0047.

SUPPLEMENTARY INFORMATION:

I. Background

NASA published a proposed rule in the Federal Register at 81 FR 24735 on April 27, 2016, to amend title 2 CFR part 1800, titled

Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards to modify the requirements related to information contained in a Federal award for commercial firms with no cost sharing requirement and to add new or modify existing terms and conditions related to indirect cost charges and access to research results. Eight respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

A. This final rule makes the following significant changes from the proposed rule:

- 2 CFR part 1800, appendix B, 1800.929 was changed to state an exclusion for institutions of higher education as prescribed under 2 CFR part 200.
- 2 CFR part 1800, appendix B, 1800.930 (a) (2) was changed to reflect that all graphics and supplemental materials submitted must be those prepared by the Awardee.
- 2 CFR part 1800, appendix B, 1800.930 (b) (2) was changed to reflect a modification to the submission deadline for the Final Peer-Reviewed Manuscript to within one year of completion of the peer review process.
- 2 CFR part 1800, appendix B, 1800.930 (b) (2) was changed to add a statement indicating that NASA would provide instructions for completing the submission process under separate cover.

- 2 CFR part 1800, appendix B, 1800.930 (b) (2) was changed to include a more direct link to the PubMed Central system.
- 2 CFR part 1800, appendix B, 1800.930 (b) (4) was changed to include a representation and warranty in respect of the right to submit the Final Peer-Reviewed Manuscript to the NASA repository.
- For added visibility, an administrative change was made to 2 CFR part 1800, appendix B, 1800.930 to move a requirement from paragraph (b) (4) into a new paragraph (b) (5).

B. Analysis of public comments

NASA reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

1. Change in negotiated indirect cost rate agreement during the period of performance of an award

Comment: One respondent recommended that the term and condition clarify that indirect cost rates may only be adjusted when a provisional rate is in place at the time of award. The respondent also recommended that the term and condition acknowledge that institutions of higher education must follow indirect cost guidance provided in 2 CFR part 200, appendix III.C.7.

Response: NASA concurs that institutions of higher education must follow indirect cost guidance in 2 CFR part 200, appendix III.C.7. However, we note that the guidance stating indirect cost rates may only be adjusted when a provisional rate is in place at the time of award applies only to IHEs and not to other types of non-Federal entities. As a result, we will adjust the term and condition to reflect the exclusion for institutions of higher education.

2. Final Peer-Reviewed Manuscript

Comment: One respondent recommended that due to intellectual property concerns associated with the use of graphics, NASA modify its definition of the Final Peer-Reviewed Manuscript to include the text and author-created graphics, and note that supplemental materials (or links to the same) may be included where helpful to understanding the text.

Response: To address this concern, NASA has modified the language in the term and condition.

3. PubMed Central system as the NASA-designated repository for Final Peer-Reviewed Manuscripts

Comment: Three respondents expressed concern with using the PubMed Central system as the NASA-designated repository for Final Peer-Reviewed Manuscripts, and recommended consideration of alternative repositories to potentially increase flexibility and reduce administrative burden.

Response: The term and condition was written to ensure compliance with NASA's Plan. During the public consultation phase of the development of the Plan, alternative repositories were considered. However, the PubMed Central system emerged as the most mature and the lowest risk for NASA. Alternative solutions may be considered in Phase 2.

4. One year submission period

Comment: One respondent recommended that the language describing the submission period of "within one year of peer-review or publication by a journal, whichever is sooner" be modified to reflect that the length of the embargo period is provisional, since the Office of Science and Technology Policy (OSTP) memo allows for publishers to petition for a longer embargo period.

Response: NASA does not believe such a change is necessary because the requirement for submission is not inconsistent with the ability of publishers to petition for more time since the manuscripts do not automatically become public when uploaded.

5. Embargo period

Comment: One respondent expressed concern over the use of an initial twelve month uniform embargo period for all fields of research, as well as the criteria used for potentially lengthening the embargo period. The respondent did not believe the criteria reflected the primary purpose of such a period, and

suggested that NASA look to language in the National Science Foundation's plan regarding petitions.

Response: The term and condition was written to ensure compliance with NASA's Plan. Because OSTP recommended 12 months as the default period, and 12 months is the maximum and most common period for PubMed Central, NASA chose an embargo period of 12 months. NASA used a public consultation process for developing the plan and believes the current language is in NASA's best interest.

6. Ambiguous language

Comment: Two respondents stated that the language in the direction to submit the Final Peer-Reviewed Manuscript within one year of peer-review or publication by a journal, whichever is earlier, is ambiguous and should be clarified.

Response: To address this concern, NASA has modified the language in the term and condition.

7. Publisher's Agreements

Comment: One respondent stated that award recipients are not party to publisher's agreements, and therefore, recommended that the obligation of publisher's agreements be limited to investigators rather than recipients.

Response: In the proposed revision at 1800.930, NASA defined Awardee to mean any recipient of a NASA grant or cooperative agreement as well as its investigators and subrecipients at any

level. If the recipient is not the investigator/author, then NASA expects that the recipient will be in privity with (i.e., have their own agreement with) the investigator/author, and can therefore enforce the obligation regarding publishing agreements. NASA is only in privity with the recipient, so NASA would not otherwise have the ability to enforce such obligation upon the investigator/author.

Comment: Two respondents recommended that language requiring rights to permit users to download XML and plain text formats be removed. One respondent suggested a technology-neutral approach be used to allow for potential future changes in technology, and another respondent suggested specifying the requirements in either broader terms or more specific terms—the middle ground approach that is currently being used is ambiguous.

Response: The term and condition was written to ensure compliance with NASA's Plan. NASA used a public consultation process for developing the plan and believes the current language is in NASA's best interest.

8. Copyright protection

Comment: One respondent recommended that NASA add language that recognizes that the rights provided to NASA to permit users to download materials can be limited by commercial use and other appropriate restrictions chosen by the author and copyright

holder. Another respondent commented that NASA should support and uphold copyright protections for scholarly publications.

Response: The US Government has unlimited rights in data deliverables produced under grant agreements, and has an obligation to assure that such deliverables are available for taxpayer use in accordance with law and regulation. This includes peer-reviewed articles funded with NASA grants. In recognition of the valuable contributions of publishers to the scholarly process, NASA is implementing embargo periods that permit publishers to benefit from a period of exclusive distribution.

9. Responsibility for claims against NASA

Comment: Three respondents stated that either they or those they represent will not be able to meet this requirement due to state statutes that do not grant authority to represent non-state personnel or entities.

Response: To address this concern, NASA has modified the language in the term and condition.

C. Other changes

During internal deliberations some minor changes were made as follows:

- 2 CFR part 1800, appendix B, 1800.930 (b) (2) was changed to add a statement indicating that NASA would provide instructions for completing the submission process under separate cover.

- 2 CFR part 1800, appendix B, 1800.930 (b) (2) was changed to include a more direct link to the PubMed Central system.
- For added visibility, an administrative change was made to 2 CFR part 1800, appendix B, 1800.930 to move a requirement from paragraph (b) (4) into a new paragraph (b) (5).

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small entities are not a substantial number of

NASA grant and cooperative agreement recipients. In addition, within the subset of awards issued to small entities, the majority are not for research so would not be affected by the new term and condition regarding access to research results. Furthermore, this rule actually benefits small businesses and all other for profit recipients by removing a requirement that could potentially expose sensitive financial information. NASA chose to remove the requirement for the inclusion of indirect cost rates on notices of Federal award in response to feedback from for profit recipients.

V. Paperwork Reduction Act

This rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C chapter 35); however, these changes to 2 CFR part 1800 do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 2700-0092, entitled Financial Assistant Awards/Grants and Cooperative Agreements.

List of Subjects in 2 CFR Part 1800

Government financial assistance.

Manuel Quinones,

NASA Federal Register Liaison Officer.

Accordingly, 2 CFR part 1800 is amended as follows:

1. The authority citation for 2 CFR part 1800 continues to read as follows:

Authority: 51 U.S.C. 20113 (e), Pub. L. 97-258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and 2 CFR part 200.

2. Revise § 1800.210 to read as follows:

§ 1800.210 Information contained in a Federal award.

NASA waives the requirement for the inclusion of indirect cost rates on any notice of Federal award for commercial firms with no cost sharing requirement. The terms and conditions for NASA may be found at appendix B of this part and https://prod.nais.nasa.gov/pub/pub_library/srba.

3. Amend appendix B to part 1800 by:

- a. Under 1800.902 Technical Publications and Reports, adding paragraph (a)(4); and
- b. Adding 1800.929 Indirect Costs and 1800.930 Access to Research Results.

The additions read as follows:

Appendix B to Part 1800—Terms and Conditions

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1800.902 Technical Publications and Reports

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(a) * * *

(4) For research and research-related awards, see additional reporting requirements at 1800.930 Access to Research Results.

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1800.929 Indirect Costs.

Prescription—The Grant Officer shall include this term and condition in all awards with indirect costs, excluding those awards to institutions of higher education and to entities using the 10% de minimis rate.

Indirect Costs

Unless otherwise directed in 2 CFR part 200, if during the course of this award, the approved indirect cost rate is revised, changed or removed, that rate must be applied, as allowed, to the covered direct costs that are expended during the time frame of that rate agreement. Any corrections, either up or down, to the approved budget submitted with the awarded application must be reflected in the awardees' records of costs and should be audited as such.

(End of Term and Condition)

1800.930 Access to Research Results

Prescription—The Grant Officer shall include this term and condition in all research and research-related awards.

Access To Research Results

(a) This award is subject to the requirements of the, "NASA Plan: Increasing Access to the Results of Scientific Research,"

which covers public access to digital scientific data and peer-reviewed publications. For purposes of this term and condition, the following definitions apply:

(1) Awardee: Any recipient of a NASA grant or cooperative agreement, its investigators, and subrecipient (subaward or contract as defined in 2 CFR 200.92 and 200.22, respectively) at any level.

(2) Final Peer-Reviewed Manuscript: The final text version of a peer-reviewed article disclosing the results of scientific research which is authored or co-authored by the Awardee or funded, in whole or in part, with funds from a NASA award, that includes all modifications from the publishing peer review process, and all graphics and supplemental material prepared by Awardee.

(b) The recipient shall:

(1) Comply with their approved Data Management Plan submitted with its proposal, and as modified upon agreement by the recipient and NASA from time to time during the course of the period of performance.

(2) Ensure that any Final Peer-Reviewed Manuscript is submitted to the NASA-designated repository, currently the PubMed Central system at <http://www.ncbi.nlm.nih.gov/pmc/>. NASA will provide instructions for completing the submission process under separate cover. Ensure that the Final Peer-Reviewed Manuscript

is submitted to PubMed Central within one year of completion of the peer review process.

(3) Ensure that any publisher's agreements entered into by an Awardee will allow for the Awardee to comply with these requirements including submission of Final Peer-Reviewed Manuscripts to the NASA-designated repository, as listed in paragraph (b)(2) of this term and condition, with sufficient rights to permit such repository to use such Final Peer-Reviewed Manuscript in its normal course, including rights to permit users to download XML and plain text formats.

(4) Hereby represent and warrant that Awardee has secured for recipient the right to submit the Final Peer-Reviewed Manuscript to the NASA-designated repository for use as set forth herein.

(5) Include in annual and final reports a list of Final Peer-Reviewed Manuscripts covered by this term and condition.

(End of Term and Condition)

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